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Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The Human Rights Situation in Colombia

Amnesty International reiterates its support for the work of the Office in Colombia of the UN High Commissioner for Human Rights to improve respect for human rights. Its work, especially human rights monitoring, will become even more critical given the uncertain human rights challenges of a peace agreement between the Colombian government and the Revolutionary Armed Forces of Colombia (FARC). To address these challenges, especially preventing human rights abuses and violations and combatting impunity, the Office's monitoring role should be strengthened.

This statement presents an overview of Amnesty International's concerns in Colombia, and recommendations to HRC members and observer states.

The peace process

The peace process has made such progress since official talks began in 2012 that Colombia is now closer than ever to putting an end to a 50-year-old armed conflict that has left an indelible scar on millions of women, men and children. The FARC's unilateral ceasefire and the government's suspension of aerial bombardments against FARC positions has alleviated some of the worst effects of the conflict on civilians living in rural areas. The agreement on victims of the conflict, which was made public last December, marks an important, albeit flawed, first step in addressing justice.

The involvement of the international community in the peace process is very important. For example, the recently adopted UN Security Council resolution 2261 (2016) authorizing a post-peace agreement mission to Colombia to monitor and verify compliance with the cease-fire and cessation of hostilities can, if effectively implemented, boost prospects for peace.

However, the legacy of widespread as well as systematic crimes under international law and human rights abuses and violations, and entrenched impunity for them, means that, despite the progress towards peace, many seemingly intractable conflict-related human rights and humanitarian challenges persist and could very likely become more acute in a post-conflict environment. For this reason, the groundswell of well-founded optimism should be tempered with caution.

While the agreement on victims of the conflict is a significant development and a clear sign that an end to hostilities is tantalizingly close, it nevertheless contains a number of provisions, as well as a number of ambiguities, that appear inconsistent with international law and standards on the right of victims to truth, justice and reparation. For example, the non-custodial sanctions set out in the agreement for those who acknowledge responsibility for grave violations of human rights and grave breaches of international humanitarian law do not appear to be proportionate to the grave nature of crimes under international law. As such, those sanctions may fail to comply with the state's obligation to prevent and punish such crimes under international law and thereby continue to undermine effective accountability.

Human rights defenders and communities and groups at risk

The still ongoing armed conflict continues to have a devastating human rights impact on many communities, especially in the countryside and in some poor urban areas. Indigenous Peoples, Afro-descendant and peasant farmer communities, and human rights defenders are particularly affected. All parties to the conflict – the security forces, paramilitaries and guerrilla groups – are responsible for crimes under international law and human rights violations and abuses, such as unlawful killings, forced displacement, enforced disappearances, death threats, torture and crimes of sexual violence.

By December 2015, the state's Victims Unit had registered some 7.8 million victims of the conflict. Over the last year, Amnesty International has expressed particular concern about the situation facing Indigenous Peoples, including in Cauca Department, and Afro-descendant communities, such as those living in Buenaventura, Valle del Cauca Department, and the surrounding areas.

The situation facing human rights defenders has deteriorated in many respects over the last year. According to the NGO Somos Defensores, 51 human rights defenders were killed between January and September 2015, compared to 45 during the same period in 2014. The number of death threats against human rights defenders and others who campaign on peace-related and other issues, also increased last year. Paramilitary groups were alleged to be responsible for most threats and killings.

Amnesty International also has ongoing concerns about misuse of the legal system to discredit the work of human rights defenders. One example is the case of Indigenous leader Feliciano Valencia who was sentenced to 18 years in prison in September 2015 for illegally holding captive a member of the security forces who had infiltrated an Indigenous protest in Cauca. Feliciano Valencia, who denies the charges, has long been the target of harassment by local and regional civilian and military officials.

Impunity

Concerns that the agreement on victims of the conflict will fail to bring to justice those allegedly responsible for human rights violations and abuses in line with international law and standards is exacerbated by several pieces of legislation approved in 2015 by the Colombian Congress, notably Law 1765 and Legislative Act No.1 amending Article 221 of the Constitution. Both laws broaden the scope of the military justice system thus threatening to make it even more difficult to hold to account members of the security forces implicated in crimes under international law and human rights violations, such as extrajudicial executions. Those campaigning for justice continue to face death threats and other human rights violations.

Land restitution

The land restitution process continues to be beset with difficulties. The process began in 2012 with the coming into force of the Victims and Land Restitution Law and its associated decrees with the aim of returning to their rightful occupants some of the millions of hectares of land misappropriated during the conflict. However, the state is failing to guarantee the security of those wishing to return and to provide them with effective social and economic support. By the end of the year, only 58,500 hectares of land claimed by peasant farmers, one 50,000-hectare Indigenous territory and one 71,000-hectare Afro-descendant territory had been subject to judicial rulings ordering their return.

In June 2015, Congress approved Law 1753 that contains provisions that might enable national and international mining companies and others with economic interests to gain legal ownership of lands that may have been misappropriated through crimes under international law. This could undermine the right of many of these lands' legitimate occupants to the restitution of their lands and territories.

Role of the international community

The international community has a critical role to play in ensuring that the peace process guarantees the full enjoyment of human rights and, in particular, the right of victims to truth, justice and reparation, including guarantees of non-repetition, in line with international law and standards. A stable peace will require effective judicial mechanisms to address the justice deficit, and comprehensive measures to prevent future crimes under international law and human rights abuses and violations.

In this respect, the special political mission created by Security Council resolution 2261(2016) is an important and welcome development. Any such mission must include a human rights component if it is to be effective. The threat to human rights in Colombia would not emanate primarily from possible violations of the cease-fire or cessation of hostilities agreements, which is the focus of the proposed mission, but from "dirty war" tactics carried out by all the parties to the conflict against civilians. Such tactics, carried out especially against communities challenging powerful economic interests on their lands and territories, will continue and could increase after the peace agreement is signed.

Amnesty International therefore urges HRC members and observer states to:

- Raise these concerns and recommendations in the HRC debates and in bilateral dialogues with the Colombian government.
- Insist that the parties to the conflict implement fully and without delay the UN High Commissioner's recommendations and human rights recommendations of other UN bodies.
- Call on the relevant actors to ensure that the agreement on victims of the conflict guarantees the right of victims to truth, justice and reparation, including guarantees of non-repetition, in line with international law and standards.
- Urge the authorities to repeal legislation, such as Law 1765 and Legislative Act No.1, that could exacerbate impunity for members of the security forces implicated in human rights violations.

- Call on the government to implement effective measures to prevent human rights abuses and violations, including by dismantling paramilitary groups and breaking their links with state actors.
- Insist that the Colombian authorities adopt specific measures to guarantee the safety of groups and communities at particular risk, including Indigenous Peoples, Afro-descendent and peasant farmer communities, land claimants, human rights defenders, trade unionists and journalists.
- Call on the authorities to address the serious deficiencies in the Victims and Land Restitution Law and in its implementation, as well as repeal provisions in Law 1753 that could undermine the right to reparation of many land claimants, especially in Indigenous and Afro-descendant territories.
- Advocate providing the special political mission created under Security Council resolution 2261(2016) with a human rights component to complement the role of the existing Office in Colombia of the High Commissioner for Human Rights, whose monitoring and reporting role should be strengthened.